

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

BANDSPEED, INC.,	)	AU:11-CV-00771-LY
	)	
Plaintiff,	)	
	)	
VS.	)	AUSTIN, TEXAS
	)	
GARMIN INTERNATIONAL INC., et al.,	)	
	)	
Defendants.	)	JANUARY 9, 2014

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TRANSCRIPT OF TELEPHONIC MOTIONS HEARING

BEFORE THE HONORABLE LEE YEAKEL

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APPEARANCES:

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24 Proceedings recorded by computerized stenography, transcript  
25 produced by computer.

13:59:52 1 (In Chambers)

13:59:52 2 MR. WHITTLESEY: We've got a bunch of folks on the  
13:59:52 3 line. Maybe we could take roll.

13:59:52 4 David Whittlesey is here for Toshiba.

13:59:58 5 MR. GOODPASTOR: Good afternoon, Katie. It's  
13:59:59 6 Chris Goodpastor for Bandspeed.

14:00:05 7 MR. QURESHI: Ms. Carmona, it's Wasif Qureshi for LG,

14:00:09 8 MR. RUECKHEIM: This is Michael Rueckheim for LG.

14:00:12 9 MR. SHERWOOD: And Jeff Sherwood and Jon Falkler for  
14:00:16 10 Toshiba.

14:00:17 11 MR. HEALEY: David Healey for LG.

14:00:23 12 MS. BADER: Caroline Bader for Garmin.

14:00:25 13 MS. LEIBFARTH: Linda Leibfarth for Bandspeed.

14:00:31 14 MS. GRANT: Bonnie Grant for the two Motorola  
14:00:33 15 defendants, Motorola Mobility and Motorola Solutions.

14:00:37 16 MR. MITCHELL: Also Mark Mitchell for the Motorola  
14:00:39 17 defendants.

14:00:52 18 MR. HADDAD: This is Gerard Haddad for Toshiba.

14:00:55 19 MS. CARMONA: Mr. Goodpastor, do you happen to know  
14:00:57 20 if that's everyone, or are we expecting anybody else?

14:01:02 21 MR. GOODPASTOR: I think all the parties are  
14:01:05 22 represented. I wasn't expecting anyone else.

14:01:10 23 MS. CARMONA: Okay. Let me go ahead and get  
14:01:10 24 Judge Yeakel on the line.

14:01:10 25 THE COURT: Good afternoon. From listening -- from

14:01:15 1 listening to the appearances, I figure it's costing about \$6500  
14:01:20 2 an hour to conduct this telephone conference. So I'm glad  
14:01:26 3 everybody is in a nice spot to do it.

14:01:29 4 I've gotten some new motions. The motions never seem  
14:01:36 5 to end, and your discovery disputes never seem to end. Has  
14:01:44 6 anything been resolved among any of you -- other than I've got  
14:01:48 7 notice of anticipated settlements by a couple of defendants.  
14:01:51 8 But with regard to the discovery matters, have you resolved  
14:01:55 9 anything, or do you-all continue to resist one another's  
14:02:02 10 requests? That can be answered yes or no.

14:02:10 11 MR. GOODPASTOR: Your Honor, speaking for Bandspeed,  
14:02:12 12 its outstanding motion to compel and motion for protective  
14:02:15 13 order have not been resolved.

14:02:17 14 THE COURT: All right. So what is the problem? Why  
14:02:19 15 haven't you been able to resolve the discovery matters? I  
14:02:23 16 thought I made it clear at our last conference that needed to  
14:02:26 17 be resolved. And I've gotten these new motions just filed  
14:02:30 18 recently, since the 1st of the year, on damages discovery. And  
14:02:36 19 I want to make it clear again before we discuss those, there  
14:02:41 20 will be no evidence of damages allowed if that evidence has not  
14:02:48 21 first been provided to the other parties.

14:02:51 22 So we can deal with protective orders, we can deal  
14:02:55 23 with motions to quash, we can deal with privileges all we want.  
14:03:00 24 But just know nothing that has not been provided to all the  
14:03:05 25 parties will be admitted in evidence in this case with regard

14:03:10 1 to damages, and you may proceed accordingly under that. So  
14:03:17 2 when we go to trial, I want everyone to be prepared when the  
14:03:22 3 objections come to show me exactly what was provided and to  
14:03:28 4 tell me when it was provided, because there will be no defense  
14:03:32 5 to damages or prosecution of damages with information that has  
14:03:36 6 not previously been provided to all parties. I thought I made  
14:03:43 7 that clear at our last phone call, and I cannot understand why  
14:03:48 8 I am still receiving problems with regard to discovery damages  
14:03:55 9 that you-all are having.

14:03:58 10 MR. GOODPASTOR: Your Honor, Chris Goodpastor. I  
14:04:01 11 think I can address that. We have provided all of the  
14:04:03 12 information that Bandspeed relies on or Bandspeed's expert is  
14:04:08 13 relying on for damages to all defendants. The issue that the  
14:04:15 14 defendants -- the remaining defendants -- not all defendants,  
14:04:18 15 but remaining defendants, raise in these motions which we  
14:04:22 16 believe are grossly untimely are issues claiming that they have  
14:04:28 17 a right to Bandspeed's counsels' work product and a right to  
14:04:33 18 depose Bandspeed's counsel. And we think the motions are  
14:04:37 19 wholly improper. We don't think that's any information that  
14:04:40 20 Bandspeed or its experts are going to rely on at trial.

14:04:44 21 THE COURT: Wait a minute. You let the word "think"  
14:04:47 22 slip into what you were saying. We're not thinking what you  
14:04:51 23 might rely on or might not rely on. If you put on anything --  
14:04:57 24 if I were to deny the motion to compel and you put on anything  
14:05:04 25 that had not been provided whatsoever, whether you thought you

14:05:09 1 were going to use it or not, it gets stricken.

14:05:13 2 So don't tell me at this late stage what you think

14:05:15 3 you're going to rely on. You should know exactly and

14:05:20 4 empirically at this point exactly what damage testimony you're

14:05:23 5 going to put on. And that's what needs to be provided *in toto*

14:05:27 6 to the remaining defendants.

14:05:29 7 MR. GOODPASTOR: Your Honor, we understand that. And

14:05:31 8 my use of the word "think" was -- I misspoke. We have provided

14:05:37 9 what we will put on at trial and what our expert will rely on

14:05:42 10 at trial regarding damages.

14:05:45 11 MR. QURESHI: Your Honor, I'd like to respond to

14:05:45 12 that. This is Wasif Qureshi for LG.

14:05:47 13 The problem with what Mr. Goodpastor is offering is

14:05:51 14 that we are not getting information that might help us disprove

14:05:57 15 or discount or discredit what Bandspeed's damages claims are.

14:06:01 16 So, I mean, their damages claim is that through settlement

14:06:07 17 negotiations, Bandspeed accepted lower royalty rates than they

14:06:12 18 otherwise would have had defendants not asserted this license

14:06:15 19 defense.

14:06:16 20 So it's fairly self-serving for Bandspeed to say

14:06:19 21 we're not going to rely on any of those communications, but it

14:06:22 22 is their allegation in this case that those settlement

14:06:26 23 communications are what caused Bandspeed to accept rates lower

14:06:30 24 than they otherwise would have.

14:06:32 25 And, moreover, as detailed in our motions to compel

14:06:35 1 that we recently filed, Bandspeed's 30(b)(6) witness pointed  
14:06:41 2 directly to its counsel as being aware of how royalty rates  
14:06:45 3 were set, what royalty rates were discussed with other parties,  
14:06:48 4 which isn't subject to an attorney-client privilege, what  
14:06:51 5 accounting was done in order to determine rates; for example,  
14:06:55 6 the number of units, past or future, that the parties may have  
14:06:59 7 discussed when determining what the amount of the settlement  
14:07:02 8 should be.

14:07:03 9 And, moreover and most importantly, which goes to  
14:07:05 10 Bandspeed's tens of millions of dollars worth of antitrust  
14:07:10 11 damages allegations, is whether Bandspeed indeed was forced to  
14:07:14 12 take lower rates or not, as their experts have claimed without  
14:07:18 13 any support, mind you. But we need to be able to go to court  
14:07:23 14 and say and tell the jury, you know, Bandspeed's expert is  
14:07:27 15 saying that Bandspeed was forced to take a lower rate, but  
14:07:31 16 there's no proof whatsoever that that happened.

14:07:35 17 So, I mean, for Bandspeed to say, Well, we've given  
14:07:39 18 everything we rely on is sort of self-serving. We're not  
14:07:44 19 getting the information that we would otherwise need to show  
14:07:46 20 that their allegations are not correct.

14:07:48 21 THE COURT: Let me clear this up for a moment. If  
14:07:50 22 Bandspeed takes the position that an element of their damages  
14:07:57 23 involves royalty rates that they have accepted, they need to  
14:08:02 24 provide the defendants -- Bandspeed needs to provide the  
14:08:06 25 defendants with all information surrounding the negotiation of

14:08:11 1 the royalty rates and how it was obtained.

14:08:14 2           You may take this to the Federal Circuit because I  
14:08:19 3 take the broad view that when the Federal Circuit opened the  
14:08:22 4 door to settlement negotiations, everything comes in as part of  
14:08:28 5 the damage case and you're not going to push me off that  
14:08:32 6 position. That's why we have the Circuit Court.

14:08:35 7           So you have to look at your damages model because  
14:08:38 8 you're not going to say, We had a royalty with company X and  
14:08:46 9 not have provided all of that information to the defendants.  
14:08:50 10 And turned around to the other way, if you're going to assert  
14:08:54 11 damages that are in any way based on anything that you have  
14:09:00 12 accepted or even knowing that you have accepted damages  
14:09:05 13 pursuant to settlement, you still have to provide that  
14:09:09 14 information to the defendants in order that they may develop a  
14:09:12 15 damages model.

14:09:14 16           That is the door that I believe was opened by the  
14:09:17 17 Federal Circuit, and only the Federal Circuit can tell us how  
14:09:23 18 wide open it is or close it again. And that is for them to do.  
14:09:27 19 But damages is something that is very, very important in this  
14:09:31 20 case, and everything about it needs to be disclosed to  
14:09:36 21 everyone.

14:09:37 22           Now, that does not mean I'm going to allow the  
14:09:40 23 defendants to depose lawyers because we go down a path there  
14:09:50 24 that is fraught with difficulty, but I will hear more argument  
14:09:53 25 on that. But everything has to be disclosed so the defendants



14:10:01 1 can defend against what the plaintiff asserts. And what the  
14:10:08 2 plaintiff has accepted in the past is something the defendants  
14:10:11 3 can use to defend the plaintiff's damages model. And that's  
14:10:17 4 just the way it is in this case. You may like it or you may  
14:10:23 5 not like it, but that's what we're going to do.

14:10:25 6 MR. GOODPASTOR: Your Honor, we accept that. I mean,  
14:10:27 7 I think you're referring to the *MSTG* case in the Federal  
14:10:32 8 Circuit that said you get information regarding negotiation to  
14:10:36 9 the extent they're relied upon by the expert witness for your  
14:10:40 10 damage model, and we provided that.

14:10:42 11 The problem here is that they're trying to get work  
14:10:45 12 product of counsel and consulting experts that they're not  
14:10:50 13 entitled to merely because, as you recall, Your Honor, we were  
14:10:53 14 ordered to attend settlement conferences by the Court. And to  
14:10:58 15 prepare for those settlement conferences in good faith, of  
14:11:01 16 course, we are going to have to advise our client on what we  
14:11:05 17 believe damages will be at the trial.

14:11:08 18 Now, these defendants are now claiming that they're  
14:11:10 19 entitled to our work product, and we think that's wholly  
14:11:14 20 improper. There is no way that you could ever participate in a  
14:11:17 21 case or settle a case if every time that you participated in  
14:11:21 22 settlement negotiations, including court-ordered settlement  
14:11:25 23 negotiations, the other side was entitled to all of your work  
14:11:29 24 product. It doesn't make sense.

14:11:30 25 THE COURT: Well, you know, that may be a pretty good

14:11:32 1 statement in general law, but I'm not sure the Federal Circuit  
14:11:36 2 agrees with you.

14:11:36 3 MR. GOODPASTOR: Well, to the extent that we -- our  
14:11:40 4 damages expert relies upon the information regarding  
14:11:44 5 negotiation, that has been provided. And with regard to all  
14:11:47 6 the lower infracompetitive licenses that we're alleging, we  
14:11:54 7 have provided all of those settlement negotiation documents and  
14:11:57 8 we provided settlement negotiation documents that were  
14:12:00 9 requested by Defendants regarding other licenses.

14:12:04 10 And so everything that's relied upon by our expert  
14:12:08 11 witness, which is what the Federal Circuit addresses in *MSTG*,  
14:12:13 12 has been provided. Now, we don't feel an obligation to provide  
14:12:14 13 our work product, Your Honor, and we don't think we should be  
14:12:16 14 forced to do that.

14:12:17 15 MR. QURESHI: Let me respond, Your Honor. Again,  
14:12:19 16 this is Wasif Qureshi for LG. We're not asking for the work  
14:12:22 17 product or the mental impressions of Bandspeed's lawyers. The  
14:12:25 18 settlement negotiations are negotiations that were communicated  
14:12:29 19 with third parties or with other defendants. So there's no  
14:12:33 20 work product or, as the Federal Circuit has said, there's not  
14:12:36 21 settlement privilege, per se, that attaches to those documents,  
14:12:40 22 particularly when those, as Your Honor has said, are squarely  
14:12:43 23 within the scope of what Bandspeed's damages allegations are.

14:12:48 24 And as far as the production of settlement  
14:12:51 25 agreements, I believe the bulk of what has been produced are

14:12:54 1 drafts of settlement agreements, not necessarily the  
14:12:57 2 back-and-forth communications that the parties had leading to  
14:13:00 3 draft of settlement agreements and ultimate settlement.

14:13:04 4 And, you know, if their expert is going to go up at  
14:13:07 5 trial and tell the jury that Defendants -- or Bandspeed had to  
14:13:13 6 accept a lower rate, we should have the information justifying  
14:13:18 7 or not justifying that. It can't have a sword and shield  
14:13:24 8 approach --

14:13:24 9 THE COURT: I understand your arguments. I am  
14:13:26 10 disappointed that you can't work that out. I will take this  
14:13:30 11 under advisement. I will tell you what I am likely to do,  
14:13:35 12 unless something dissuades me before I draft the order, is  
14:13:39 13 leave it where it lies at this point and start excluding things  
14:13:44 14 during trial if proper predicate is not laid or if there is a  
14:13:49 15 good objection.

14:13:49 16 So you're going -- you're likely to go into trial not  
14:13:54 17 knowing what the result is going be, and I will deal with it as  
14:14:03 18 we go along through trial because I have dealt with the  
14:14:05 19 discovery disputes in this case for a long time. I am tired of  
14:14:09 20 them. Damages has not been a secret as to what was going to go  
14:14:13 21 on in this case and what was going to have to be proved, and  
14:14:17 22 I'm not going to stretch out discovery any further.

14:14:20 23 So I will again look over the motions very carefully,  
14:14:25 24 but you're likely to go to trial with what you have and I will  
14:14:29 25 listen to your objections as we go along and we'll tailor what

14:14:35 1 testimony I'm going to allow by each party when we get into  
14:14:41 2 trial.

14:14:43 3           So with that having been said, what I want to do is  
14:14:46 4 go through the older motions that I have and ask you whether or  
14:14:52 5 not anything in them is still alive or anything -- whether it's  
14:15:00 6 been washed out because of the various settlements we've had  
14:15:06 7 since the last time we talked. And if there is anything still  
14:15:09 8 alive in it, what it is, because I want to deal with all of  
14:15:15 9 these motions. And by "all of these motions," I'm leaving out  
14:15:18 10 the motions for summary judgment that I have other than to say  
14:15:22 11 the Court will entertain no further motions for summary  
14:15:26 12 judgments from this point. Dispositive motions are done at  
14:15:31 13 this stage. So let me --

14:15:33 14           MR. GOODPASTOR: Your Honor?

14:15:34 15           THE COURT: Yes?

14:15:35 16           MR. GOODPASTOR: I'm sorry. Chris Goodpastor,  
14:15:37 17 Your Honor. I don't mean to interrupt.

14:15:39 18           THE COURT: No. Go ahead.

14:15:40 19           MR. GOODPASTOR: When we -- we were planning to seek  
14:15:43 20 summary judgment on some of the numerous defenses that  
14:15:48 21 Defendants have raised that we don't believe any supporting --

14:15:51 22           THE COURT: You know, how long ago did they raise  
14:15:53 23 those defenses? When was their last live responsive pleading  
14:15:57 24 filed?

14:15:58 25           MR. GOODPASTOR: I think it differs for different

14:16:02 1 defendants, Your Honor. But I think what we were relying on is  
14:16:05 2 the fact that the parties had agreed that tomorrow was the  
14:16:07 3 deadline for filing those motions for summary judgment.

14:16:11 4 THE COURT: Well, you can file them tomorrow, then.

14:16:14 5 MR. GOODPASTOR: Thank you, Your Honor.

14:16:15 6 THE COURT: I will recognize tomorrow.

14:16:17 7 Now, Document Number 1270, Bandspeed's motion to  
14:16:20 8 compel, filed June 24th, 2013: What's the status of it?

14:16:27 9 MR. GOODPASTOR: Your Honor, that motion to compel  
14:16:29 10 related primarily to communications regarding the  
14:16:34 11 interpretation of the Bluetooth SIG patent copyright license  
14:16:41 12 agreement and the defendants' concerted approach towards making  
14:16:45 13 those interpretations and negotiating the license of Bandspeed.

14:16:55 14 Those documents have not been provided. There's been  
14:16:57 15 a claim of privilege over those documents that, as we state in  
14:17:01 16 our motion and our reply, has not been supported by evidence.  
14:17:06 17 And, therefore, we don't think there's a valid claim of  
14:17:08 18 privilege there, and we think that those documents go directly  
14:17:12 19 to the heart of our conspiracy claims in this case and also go  
14:17:18 20 directly to the issues raised in Defendants' motion for summary  
14:17:21 21 judgment on the antitrust claim.

14:17:23 22 Essentially, Defendants on one hand are claiming that  
14:17:26 23 there is no evidence of conspiracy. On the other hand, they're  
14:17:30 24 saying that all the communications that would show that  
14:17:34 25 evidence are privileged either through a joint defense

14:17:38 1 privilege or otherwise.

14:17:39 2 We're not seeking communications directly between  
14:17:42 3 lawyers and their clients. But we do think that the  
14:17:44 4 communications between and among the parties, including  
14:17:49 5 Bluetooth SIG and others who have settled out, are relevant to  
14:17:52 6 whether the defendants got together and, in a concerted effort,  
14:17:58 7 agreed to retroactively reinterpret the licensing provisions of  
14:18:03 8 the Bluetooth SIG to prevent Bandspeed from claiming or  
14:18:08 9 asserting its patent rights in this case.

14:18:13 10 Unfortunately, because of the nature of the privilege  
14:18:16 11 allegations, we've been unable to resolve this with Defendants  
14:18:20 12 and they have been unwilling to compromise from their position.

14:18:25 13 THE COURT: Let me hear from the defendants.

14:18:29 14 MR. RUECKHEIM: Your Honor, this is Michael Rueckheim  
14:18:31 15 for LG.

14:18:32 16 I think what Mr. Goodpastor is discussing is  
14:18:36 17 document 1270, the joint defense agreement in this case that  
14:18:41 18 sought communications between counsel for the various  
14:18:44 19 defendants. We cited law in our response. This information is  
14:18:50 20 clearly privileged. They could never show any reason why the  
14:18:52 21 privilege should be waived in this case.

14:18:56 22 On top of that, at least for LG, we actually provided  
14:19:00 23 a witness that stated that outside of privileged  
14:19:05 24 communications, there has been no communications between LG and  
14:19:08 25 any other defendant or member of the Bluetooth SIG regarding an

14:19:12 1 interpretation of this Bluetooth SIG license agreement.

14:19:17 2 MR. HEALEY: Judge, this is Dave Healey for LG. And  
14:19:18 3 I apologize. I'll just say one quick thing here. This is  
14:19:23 4 really the whole guts of the *Noerr-Pennington* antitrust thing,  
14:19:27 5 and that is this antitrust claim is based on the lawyers and  
14:19:31 6 this lawsuit -- I guess me and the other lawyers for Toshiba  
14:19:38 7 and the lawyers for Apple and the lawyers for Samsung and all  
14:19:41 8 these other lawyers around the State of Texas and other places  
14:19:44 9 in the country -- after this lawsuit was filed, all of us  
14:19:49 10 getting together and conspiring to file a sham defense of  
14:19:51 11 patent license based upon the Bluetooth SIG agreement.

14:19:55 12 And now what's going on is they're asking for  
14:20:00 13 communications between all these law firms that have been  
14:20:03 14 defending this lawsuit to try to find evidence or say that  
14:20:07 15 we're hiding evidence that all of us got together and made an  
14:20:10 16 agreement to raise a defense, that we've been a sham and fraud  
14:20:15 17 on the Court, so we could force down a settlement.

14:20:18 18 And you know, that's -- that goes to the guts of it  
14:20:21 19 here. And, you know, just to me, if there were anything like  
14:20:27 20 that that fell into any kind of exception, you know, fine. But  
14:20:32 21 there's not anything like that, and so the joint defense  
14:20:36 22 communications are what they are. It's a remarkable claim, and  
14:20:40 23 one we think is barred.

14:20:42 24 MR. GOODPASTOR: Your Honor, if I may address that?

14:20:45 25 THE COURT: Well, just a minute. Does anybody with

14:20:48 1 Toshiba want to say anything about that? Or has Toshiba  
14:20:51 2 already spoken? I heard LG, but I didn't hear anybody identify  
14:20:56 3 themselves as part of Toshiba.

14:20:58 4 MR. SHERWOOD: Your Honor, this is Jeff Sherwood for  
14:21:01 5 Toshiba. I would just say that I think Mr. Healey's  
14:21:06 6 characterization is correct, that in the nature of these  
14:21:08 7 things, when a bunch of defendants are sued, as the Court is  
14:21:12 8 well aware, joint defense groups are formed to coordinate and  
14:21:16 9 try to streamline the defense and that's what happened here.  
14:21:19 10 And the plaintiffs have shown no reason why it should be a  
14:21:24 11 allowed to pierce those communications.

14:21:29 12 THE COURT: All right. Now, Mr. Goodpastor.

14:21:34 13 MR. GOODPASTOR: Thank you, Your Honor. The  
14:21:35 14 defendants are portraying the allegations of this case, we  
14:21:39 15 believe, inaccurately in an attempt to set them up to be  
14:21:42 16 knocked down by the *Noerr-Pennington* doctrine or other defenses  
14:21:45 17 that they've asserted. We want to make clear that our  
14:21:47 18 allegations are based upon not the assertion of defenses by the  
14:21:52 19 defendants. And we make clear in our papers, our allegations  
14:21:55 20 are based upon a conspiracy to reinterpret and change and  
14:21:59 21 manipulate the licensing rules of the Bluetooth SIG to  
14:22:02 22 disadvantage Bandspeed.

14:22:04 23 Now, the evidence we have seen on this, Your Honor,  
14:22:06 24 is not evidence between outside counsel. What we have seen or  
14:22:11 25 what has been produced, but very little of it, has been



14:22:14 1 evidence between individual companies and Bluetooth SIG -- for  
14:22:23 2 example, Parrot and Bluetooth SIG talking about how this  
14:22:27 3 agreement should be interpreted and whether this contribution  
14:22:30 4 reinterpretation should be made; evidence between Huawei and  
14:22:35 5 Bluetooth SIG about how to interpret the agreement in light of  
14:22:38 6 Bandspeed's claim -- not between, necessarily, in all cases the  
14:22:42 7 outside counsel.

14:22:44 8           Now, I don't know if that exists or not. But,  
14:22:46 9 really, what this goes to -- the heart of what this goes to is  
14:22:49 10 the folks in the standard-setting organization and people who  
14:22:54 11 control the standard-setting organization manipulating the  
14:22:58 12 standard-setting organization to change the rules after the  
14:23:01 13 fact to prevent Bandspeed from asserting patent rights.

14:23:06 14           THE COURT: So what do you have specifically with  
14:23:08 15 regard to LG and Toshiba?

14:23:12 16           MR. GOODPASTOR: We don't have -- they've refused to  
14:23:14 17 produce anything.

14:23:15 18           THE COURT: No. What evidence do you have that LG  
14:23:18 19 and Toshiba specifically were engaged in any practice such as  
14:23:26 20 this?

14:23:27 21           MR. GOODPASTOR: Well, the 5th Circuit -- first of  
14:23:29 22 all, the --

14:23:29 23           THE COURT: No. I don't want to know what the  
14:23:31 24 5th Circuit says. I want you to answer my question.

14:23:34 25           MR. GOODPASTOR: Okay. There are two aspects of it.

14:23:36 1 One is evidence of their control over the Bluetooth SIG and  
14:23:39 2 evidence that the Bluetooth SIG as a controlled entity by  
14:23:42 3 competitors asserted this change in the rules to benefit those  
14:23:47 4 who control it. And Toshiba and LG are both on the board of  
14:23:52 5 the Bluetooth SIG and control it.

14:23:55 6 And we have governance policies of the Bluetooth SIG  
14:23:59 7 and the deposition testimony of the executive director of  
14:24:01 8 Bluetooth SIG, Mark Powell, testifying that the executive  
14:24:04 9 director was in fact empowered with the full authority of the  
14:24:08 10 board of directors to implement the rules of the  
14:24:10 11 Bluetooth SIG. And when Dr. Foley did that, he did that as --  
14:24:15 12 he did that on behalf of Bluetooth SIG, controlled by these  
14:24:21 13 competitors. And that is a concerted effort, in violation of  
14:24:23 14 section 1.

14:24:23 15 We have evidence of LG and Toshiba making statements  
14:24:32 16 in this case, which the Supreme Court has stated can be used as  
14:24:36 17 evidence of a conspiracy, contemporaneously and in a parallel  
14:24:45 18 manner such that it indicates that the -- an inference of an  
14:24:53 19 agreement, combined with expert testimony showing that each of  
14:24:59 20 these defendants had an incentive to conspire, and the  
14:25:10 21 likelihood of independent action is not as great as likelihood  
14:25:14 22 of conspiracy in this case.

14:25:15 23 And we also have what many courts have referred to as  
14:25:19 24 plus factors in this case that they call basically  
14:25:24 25 circumstantial evidence of conspiracy. That includes numerous

14:25:28 1 past interpretations by the Bluetooth SIG that are at odds with  
14:25:33 2 this new interpretation by the Bluetooth SIG and the folks who  
14:25:38 3 control the Bluetooth SIG about how the license agreement works  
14:25:41 4 and whether or not there are in fact licensing for  
14:25:45 5 contributions made by members of the Bluetooth SIG.

14:25:49 6 We also have other plus factors that show -- that  
14:25:52 7 refer to the opportunity for individual companies to conspire,  
14:25:59 8 and we've cited that in our response to summary judgment motion  
14:26:03 9 which shows that not only do these folks -- many of these folks  
14:26:09 10 participate in the same organizations within Bluetooth SIG,  
14:26:13 11 many of them were in the coexistence working group of the  
14:26:16 12 Bluetooth SIG. And after the fact -- after Bandspeed asserted  
14:26:21 13 its patent rights, they also occupied positions in the same  
14:26:26 14 groups and had an opportunity to trade information regarding  
14:26:29 15 Bandspeed's assertion of its rights in that regard.

14:26:42 16 MR. HEALEY: If Mr. Goodpastor is done, this is Dave  
14:26:44 17 Healey for LG, I would just like a quick minute to respond.

14:26:47 18 THE COURT: I suspect you'll be longer than a minute,  
14:26:50 19 but go ahead, Mr. Healey.

14:26:52 20 MR. HEALEY: I'll try, Your Honor. Bottom line, I  
14:26:54 21 think the second big category of discovery he wanted was based  
14:26:58 22 on statements that LG and Toshiba had made in this case.  
14:27:02 23 That's not statements people made in depositions. That's  
14:27:05 24 statements lawyers made in pleadings and briefs. And that's  
14:27:08 25 exactly the kind of thing that is protected by the First

14:27:11 1 Amendment.

14:27:13 2           The second thing, Your Honor, is that the test to set  
14:27:17 3 aside that privilege -- and it's kind of kooky we're even  
14:27:22 4 talking about it because I can't even see any way they get  
14:27:24 5 close to this -- is that our defense is so objectively  
14:27:28 6 unreasonable, so frivolous, that it's a sham. And because it's  
14:27:31 7 a sham, a fraud on the court, then, you know, we basically are  
14:27:37 8 in that fraud exception.

14:27:39 9           Bottom line, this is a written contract. It's a  
14:27:42 10 written set of rules. It says what it says. It is what it is.  
14:27:46 11 And we, as lawyers, have made our arguments on what that  
14:27:51 12 paragraph says or that contract says. They're making their  
14:27:56 13 arguments on what it says. We think our arguments are better,  
14:28:00 14 but they're sure not a fraud on the Court, and they're sure no  
14:28:03 15 basis to come to all these law firms who have been representing  
14:28:06 16 their clients in this case as zealous, honest lawyers and say,  
14:28:10 17 No. You-all are part of this fraud on the Court. We want all  
14:28:14 18 your communications between each other.

14:28:17 19           Do I have to testify at trial and say: No. I didn't  
14:28:19 20 commit fraud on the Court. I firmly believe this license  
14:28:23 21 defense is a good defense as a matter of law and I'll explain  
14:28:25 22 to you and the jury why I think it's a good defense as a matter  
14:28:29 23 of law.

14:28:30 24           THE COURT: I've heard all I need to hear on that  
14:28:32 25 motion. I want to proceed to Document Number 1274, Bandspeed's

14:28:37 1 corrected motion to compel end-product defendants to produce  
14:28:40 2 30(b)(6) witnesses in the United States at a single location  
14:28:45 3 and on a reasonable schedule.

14:28:46 4 I was of the impression that we got that resolved in  
14:28:51 5 our last conversation. Am I wrong?

14:28:55 6 MR. GOODPASTOR: No. We're wrong. We made the  
14:28:57 7 reservation of the right to tax the expenses as cost, but the  
14:29:05 8 30(b)(6) depositions did occur. Now, we do have a motion  
14:29:11 9 outstanding regarding the lack of preparation of LG's 30(b)(6)  
14:29:16 10 witnesses which we have not resolved. But the motion to compel  
14:29:21 11 to produce witnesses in the United States has been resolved  
14:29:26 12 subject to our reservation.

14:29:26 13 THE COURT: And subject to the court statements that  
14:29:29 14 would tax it as cost at the end; is that correct?

14:29:32 15 MR. GOODPASTOR: That is correct, Your Honor.

14:29:33 16 THE COURT: All right. Anybody disagree with that?

14:29:37 17 (No response)

14:29:37 18 THE COURT: All right. Motion for protective order  
14:29:39 19 by LG Electronics, filed July 26th, 2013, Document 1344?

14:29:48 20 MR. RUECKHEIM: Your Honor, this is Mike Rueckheim  
14:29:52 21 for LG again. It's our impression that these motions for  
14:29:54 22 protective order are actually moot at this point. The 30(b)(6)  
14:30:01 23 depositions have occurred, and discovery is now closed and  
14:30:07 24 neither party moved to compel further 30(b)(6) testimony.

14:30:12 25 THE COURT: All right.

14:30:12 1 MR. GOODPASTOR: Your Honor, this is Chris Goodpastor  
14:30:14 2 for Bandspeed. We don't believe that's the case. We don't  
14:30:17 3 believe that the issues raised in the motion for protective  
14:30:21 4 order were valid, and we explain that in our response. What  
14:30:25 5 happened --

14:30:25 6 THE COURT: Well, wait a minute. It's their motion.  
14:30:30 7 If they think it's moot at this point, are you going to argue  
14:30:33 8 that I go ahead and grant their motion for protective order?

14:30:36 9 MR. GOODPASTOR: No, Your Honor. But I think as part  
14:30:39 10 of the motion for protective order, if you deny it, Rule 26  
14:30:43 11 gives you the opportunity to order the production of the  
14:30:48 12 witnesses. What we have here is basically a situation where  
14:30:52 13 they refuse to produced witnesses on numerous topics, filed a  
14:30:55 14 motion for protective order a couple of days before when we  
14:30:58 15 were flying to Korea. And then, you know, we've flown over to  
14:31:02 16 Korea and we get there -- and, you know, they gave us notice  
14:31:05 17 they weren't going to produce them. But we get there, and we  
14:31:09 18 basically fly to Korea and we take the depositions and we don't  
14:31:12 19 have an opportunity to resolve the motion for protective order  
14:31:15 20 before the flight to Korea. And we get there and we take  
14:31:18 21 whatever depositions on whatever topics they agree to produce,  
14:31:22 22 but then we come back and don't have deposition testimony on  
14:31:24 23 those topics.

14:31:25 24 And so if you deny the motion for protective order,  
14:31:28 25 which we think you do, Rule 26 gives you the opportunity to

14:31:31 1 order them to go ahead and produce witnesses on those topics or  
14:31:36 2 exclude, we believe, because of the nature of the way it was  
14:31:41 3 raised. But we would like to have the opportunity to have  
14:31:45 4 witness testimony on some of those topics.

14:31:50 5 And so if they don't believe it's moot and don't  
14:31:53 6 intend to assert the motion any longer, they can withdraw it.  
14:31:57 7 We certainly don't have any disagreement with that. But what  
14:32:00 8 we've got is a situation where we weren't given witnesses on a  
14:32:02 9 good number of topics.

14:32:04 10 THE COURT: Well, you may just have to go to trial  
14:32:06 11 without the witnesses. And if they put on witnesses and you  
14:32:10 12 haven't had discovery with regard to them, I can always exclude  
14:32:16 13 the testimony. I don't think there needs to be a deposition of  
14:32:23 14 every human being in the world that might have ever breathed  
14:32:26 15 the word "Bandspeed" or "LG" or "Toshiba." And these are  
14:32:31 16 things that I'm more than happy to deal with as the case goes  
14:32:35 17 along.

14:32:39 18 MR. GOODPASTOR: Understood, Your Honor.

14:32:40 19 THE COURT: Now, motion for protective order as to  
14:32:43 20 certain 30(b)(6) topics by -- well, Garmin's gone. Does  
14:32:47 21 Document 1369 apply to anyone else? The Garmin motion?

14:32:56 22 MS. GRANT: No. It's just for Garmin, Your Honor.

14:33:00 23 THE COURT: Bandspeed's motion to strike or limit  
14:33:02 24 end-product defendants' invalidity contentions, phase III,  
14:33:06 25 filed August 20th, 2013, Document 1389. Mr. Goodpastor?

14:33:11 1 MR. GOODPASTOR: We received a limitation of  
14:33:19 2 infringement contentions, not what we requested, but a  
14:33:22 3 limitation of infringement contentions not, we believe, in a  
14:33:28 4 timely manner. But the first time we received them was in the  
14:33:30 5 expert report that was served on the evening of November 1st or  
14:33:35 6 maybe the early morning of November 2nd.

14:33:38 7 We did our very best to respond to those infringement  
14:33:41 8 contentions as asserted. And so at this time we don't believe  
14:33:47 9 that there's anything remaining on that motion. However, we  
14:33:54 10 are -- would like to reserve our rights to the extent that  
14:33:58 11 something wasn't provided in a timely manner to -- as  
14:34:03 12 Your Honor has indicated earlier, to exclude evidence on that  
14:34:06 13 at trial.

14:34:07 14 THE COURT: You're not waiving any right. Anything I  
14:34:12 15 do with these motions you can bring up during trial when we're  
14:34:15 16 going through the evidence. So I don't want to hear from  
14:34:18 17 anybody that we had a conference call on January the 9th and  
14:34:22 18 anybody waived anything, because I don't consider you-all  
14:34:26 19 waiving anything.

14:34:27 20 Does anyone on the defendants' side care to comment  
14:34:30 21 at this point?

14:34:33 22 MR. RUECKHEIM: Your Honor, this is Michael Rueckheim  
14:34:36 23 again for LG. Basically, if Bandspeed is withdrawing the  
14:34:38 24 motion, I don't think we have anything further.

14:34:40 25 THE COURT: I don't think Mr. Goodpastor is



14:34:42 1 withdrawing it. I think he's just answering my question.

14:34:47 2 MR. RUECKHEIM: Okay. Then let me restate.

14:34:51 3 THE COURT: See, this is the problem with this case,  
14:34:53 4 is you-all really don't communicate very well and you don't  
14:34:56 5 listen to one another and you draw conclusions from what you  
14:34:59 6 think you hear instead of objectively looking at exactly what  
14:35:05 7 was said and determining the words that were said. And that's  
14:35:08 8 the problem the Court has had with every lawyer in this case  
14:35:11 9 since it was first filed. Now proceed.

14:35:16 10 MR. RUECKHEIM: Okay. Your Honor, I believe we're  
14:35:18 11 discussing docket 1381.

14:35:21 12 THE COURT: You heard that. That's good.

14:35:24 13 MR. RUECKHEIM: Bandspeed's motion regarding  
14:35:27 14 invalidity contentions. The reason for my confusion is I  
14:35:29 15 noticed Mr. Goodpastor I think discussed infringement  
14:35:32 16 contentions a couple of times. I know there's an outstanding  
14:35:35 17 motion on that.

14:35:36 18 With regard to 1381, we actually discussed this with  
14:35:40 19 Bandspeed and the Court in the last couple of hearings. And my  
14:35:43 20 understanding -- I wasn't on the first hearing where this was  
14:35:45 21 discussed, but Defendants actually -- the Court ordered  
14:35:48 22 Defendants to not file any responses -- briefings to that  
14:35:53 23 motion and to meet and confer with Bandspeed to determine a  
14:35:57 24 schedule where Defendants would limit the number of prior art  
14:35:59 25 references asserted in this case. And as Mr. Goodpastor said,

14:36:03 1 Defendants did that. That's been done now for a couple of  
14:36:06 2 months, and that's where we stand.

14:36:07 3 THE COURT: All right.

14:36:07 4 MR. GOODPASTOR: And just quickly, Your Honor, we  
14:36:11 5 didn't agree on the schedule. That's the problem I was  
14:36:14 6 raising, and that's the right I was reserving. We had a  
14:36:16 7 schedule where we actually had an opportunity for our expert to  
14:36:20 8 review the numerous invalidity contentions and sufficient time  
14:36:24 9 to develop an expert report. So the parties did not agree on  
14:36:25 10 the schedule.

14:36:27 11 THE COURT: Defendant Toshiba Corporation, Toshiba  
14:36:30 12 America Information Systems, Inc., and Toshiba America Inc.'s  
14:36:34 13 motion for an order of protection as to certain 30(b)(6)  
14:36:38 14 topics, filed October 11th, 2013, Document 1401?

14:36:45 15 MR. HADDAD: This is Gerard Haddad for Toshiba,  
14:36:48 16 Your Honor. Assuming Bandspeed is still seeking information --  
14:36:58 17 a witness on certain 30(b)(6) topics, we were seeking a motion  
14:37:02 18 for protective order from the Court because certain of  
14:37:04 19 Bandspeed's topics were seeking things like expert opinion.  
14:37:08 20 There was a whole list of deposition topics directed to  
14:37:15 21 *Georgia-Pacific factors which are squarely within expert*  
14:37:19 22 *testimony and not factors that are -- are not topics under*  
14:37:25 23 *which a party can provide fact testimony.*

14:37:30 24 They didn't characterize these topics as seeking  
14:37:34 25 particular facts. They were just seeking what we -- for

14:37:39 1 example, what we contend to be a reasonable royalty in this  
14:37:43 2 case. We have no fact witness who could testify to that. We  
14:37:46 3 have an expert who has, but it was a whole series of topics on  
14:37:50 4 that seeking expert opinion.

14:37:52 5 Other topics were seeking legal analysis. And,  
14:37:55 6 finally, there were -- there were several topics seeking sales  
14:38:01 7 of goods outside the United States which have nothing to do  
14:38:06 8 with patent infringement of U.S. patents. They were seeking  
14:38:10 9 worldwide sales.

14:38:11 10 And so our motion for protective order, Your Honor,  
14:38:15 11 was directed to those topics on worldwide sales, topics seeking  
14:38:20 12 expert testimony, and topics seeking legal analysis, for  
14:38:24 13 example, interpretation of a contract.

14:38:28 14 That's where we had left it. After we filed that  
14:38:32 15 motion, Your Honor, we did have depositions in Japan. We  
14:38:36 16 provided very knowledgeable witnesses. And I guess I'd have to  
14:38:43 17 hear from Bandspeed to see where they stand on that now.

14:38:46 18 THE COURT: Mr. Goodpastor?

14:38:48 19 MR. GOODPASTOR: Quickly, Your Honor, we disagree  
14:38:50 20 that we were seeking expert testimony. We referred to the  
14:38:55 21 facts that underlie *Georgia-Pacific* factors such as licenses  
14:39:01 22 and other facts that underlie that. We actually had meet and  
14:39:05 23 confer before we went over to Japan to take these depositions  
14:39:09 24 on this very issue and sent over redlines that made it very  
14:39:12 25 clear we were only seeking facts and not seeking expert

14:39:15 1 testimony. To the extent there were underlying facts, we just  
14:39:19 2 wanted the witness to either say what they were or tell us that  
14:39:21 3 the company didn't have them, but we weren't provided that  
14:39:24 4 opportunity.

14:39:24 5 We're not seeking legal analysis. What we were  
14:39:28 6 seeking with regard to previous interpretations of the license  
14:39:31 7 agreement is whether or not there was any evidence of Toshiba  
14:39:39 8 or any of the other defendants, including Bluetooth SIG, taking  
14:39:42 9 the position that they are now taking with regard to the  
14:39:46 10 interpretation of the license agreement.

14:39:48 11 We were not seeking a legal opinion or anything like  
14:39:51 12 that. We were seeking factual information -- and Bluetooth SIG  
14:39:54 13 produced some of this, but we didn't get it from Toshiba or  
14:39:58 14 other individual defendants -- whether there was factual  
14:40:01 15 information that showed that Toshiba or other defendants  
14:40:04 16 interpreted the contract the way they now claim it should be  
14:40:07 17 interpreted. And we don't think that exists, but we wanted to  
14:40:10 18 make sure of that.

14:40:11 19 We have the same problem with the Toshiba depositions  
14:40:14 20 that we had with the LG depositions, which is we met and  
14:40:17 21 conferred beforehand, and Mr. Haddad was kind enough to tell us  
14:40:22 22 which topics they weren't producing witnesses on. But there  
14:40:25 23 was no way the protective order could be resolved before we had  
14:40:28 24 to fly to Japan and take the depositions. And, therefore, we  
14:40:31 25 got over there, we took the depositions on the topics they

14:40:34 1 agreed to produce the witnesses on, and weren't allowed to take  
14:40:38 2 the deposition on the other topics, which we think are critical  
14:40:41 3 parts of our case.

14:40:43 4 THE COURT: What critical parts of your case are you  
14:40:45 5 referring to?

14:40:46 6 MR. GOODPASTOR: Well, the facts underlying certain  
14:40:49 7 *Georgia-Pacific* factors, Your Honor, including other license  
14:40:54 8 agreements that are related to the technology at issue; facts  
14:40:59 9 regarding interpretations -- previous interpretations of the  
14:41:02 10 license agreement in the past. If it is shown that Toshiba or  
14:41:06 11 other defendants have interpreted the license agreement the way  
14:41:09 12 that we think the plain language of the license agreement  
14:41:17 13 indicates, then we think that's very important to not only our  
14:41:19 14 antitrust claim, but also to our defense of their counterclaim  
14:41:23 15 and their defense of license in this case under that agreement.

14:41:27 16 And so, you know, you may have seen that Toshiba  
14:41:30 17 filed a motion of summary judgment claiming that its  
14:41:32 18 interpretation of the license agreement is correct and  
14:41:35 19 referring to documents it purports to represent as evidence of  
14:41:41 20 intent of the parties.

14:41:42 21 Well, we want that same evidence and information from  
14:41:45 22 Toshiba. We want to know how they've interpreted this  
14:41:49 23 situation and this license in the past to see what they're  
14:41:51 24 claiming now about the intent of the parties is actually  
14:41:54 25 consistent with the facts. And, unfortunately, we haven't been

14:41:57 1 given the opportunity to get those depositions on those  
14:42:00 2 topics.

14:42:01 3 And so, like LG, we had to fly over there, get what  
14:42:04 4 we could, what they agreed to put up, and then we came back.  
14:42:07 5 Now, with the understanding you said there aren't going to be  
14:42:10 6 more depositions in this case, we would make the same  
14:42:14 7 reservation of rights to exclude evidence on those topics at  
14:42:18 8 trial.

14:42:19 9 MR. HADDAD: Your Honor, may I respond? First I  
14:42:22 10 think -- I think the way the deposition topics have been  
14:42:25 11 characterized have been -- have been re-characterized in a way  
14:42:30 12 that aren't the way they're written. I mean, one example of  
14:42:34 13 one of the topics is whether and how the antitrust laws of the  
14:42:37 14 United States apply to the Bluetooth SIG?

14:42:40 15 But what we did do at the deposition, Your Honor, on  
14:42:47 16 a number of these topics we withdrew objections and told  
14:42:51 17 counsel for Bandspeed that if they can ask a question in a  
14:42:55 18 non-objectionable way, we would let the witness answer. And  
14:42:59 19 Bandspeed did not ask -- we produced a witness who is our  
14:43:04 20 representative to the Bluetooth SIG. And Mr. -- his name is  
14:43:08 21 Mr. Adachi. He was not asked a single question related to  
14:43:12 22 antitrust issues, relating to the market for licenses of  
14:43:15 23 Bluetooth technology, relating to any government investigation  
14:43:19 24 relating to the Bluetooth SIG. We had no blanket objection to  
14:43:23 25 that, and Bandspeed did not ask questions on those. We

14:43:26 1 would -- if they could ask a factual question, we would have  
14:43:29 2 let them answer them and we told them that. We told them that  
14:43:33 3 at the deposition.

14:43:34 4           So if -- but looking at these particular topics, the  
14:43:37 5 way they're phrased, we were -- we were tasked with divining  
14:43:41 6 what facts might underlie these topics that are really topics  
14:43:47 7 directed to experts or lawyers. And had they said we want  
14:43:53 8 facts on this topic, we could have -- possibly we could have  
14:43:57 9 given them that.

14:43:58 10           MR. GOODPASTOR: Again, Your Honor, Chris Goodpastor.  
14:44:00 11 We had an extensive meet and confer before, and we made those  
14:44:07 12 very arguments -- all we are looking for were facts. We  
14:44:10 13 weren't looking for a legal opinion. And all we wanted the  
14:44:12 14 witness to be able to say is are you aware of the facts or are  
14:44:17 15 you not?

14:44:17 16           And we were told there are not going to be witnesses  
14:44:20 17 produced on many topics, and there weren't. Now, when we got  
14:44:23 18 to Japan after flying for 14 hours, we were told when we got  
14:44:27 19 there that, Okay. You can ask some questions on some topics  
14:44:31 20 and we did our best. But on some topics and some questions,  
14:44:35 21 the witness was instructed not answer.

14:44:37 22           And so, again, we make the same reservation of  
14:44:41 23 rights. I understand for administrative purposes ordering  
14:44:44 24 another deposition, the Court doesn't desire to do that and I  
14:44:47 25 understand that.

14:44:48 1 THE COURT: But let me tell you, even if I were  
14:44:52 2 compelled to do that or impelled to do that, I don't think we  
14:44:56 3 accomplish anything because you-all always disagree on what  
14:45:00 4 questions were asked and what answers were given and whether  
14:45:02 5 somebody was properly prepared.

14:45:06 6 I told you this before, and I'm going to tell you  
14:45:08 7 this again: I have never in my 10-plus years on this bench had  
14:45:12 8 a case where the lawyers can agree on less and do not cooperate  
14:45:19 9 any more than you do. You may think you're cooperating, but I  
14:45:23 10 have seen very little in the entire history of this case that  
14:45:28 11 makes me think that anybody has worked hard to get this case  
14:45:31 12 ready for trial and with the understanding that their job is to  
14:45:35 13 get the case ready for trial and pay attention to what the law  
14:45:42 14 is and what the discovery rules are.

14:45:44 15 Everybody slices it as thin as they can slice it.  
14:45:50 16 Everybody construes everything in their favor. Nobody cuts  
14:45:53 17 anybody any slack in this case. And I've just never had a  
14:46:00 18 group of lawyers that behave that way before. So I just want  
14:46:03 19 you to know that. That's the mind set I go into this trial  
14:46:06 20 with, and that is that nobody has any credibility with me. So  
14:46:08 21 you don't need to worry about that.

14:46:10 22 But, you know, if I ordered another deposition, we'd  
14:46:14 23 be right back having another telephone conference or hearing on  
14:46:17 24 what did or did not happen in it. You know, it's time to get  
14:46:23 25 everything together and go to trial, and somebody's going to



14:46:28 1 get cut and somebody's not. Or it's going to go both ways  
14:46:32 2 because there are going to be objections sustained and  
14:46:34 3 objections denied. And we'll package the whole thing up, and  
14:46:37 4 you can go to Washington with it. I mean, that's the way it  
14:46:41 5 works. So I think I've heard what I need to hear on this one.

14:46:46 6 Now, Plaintiff Bandspeed, Inc.'s motion to exclude  
14:46:49 7 written alternative to compel End-Product Defendants to provide  
14:46:53 8 responses to interrogatory 13 and produce knowledgeable  
14:46:58 9 30(b)(6) witnesses on noninfringement, filed November 4, 2013.

14:47:03 10 I thought I was clear many months ago on  
14:47:07 11 interrogatory 13, and it's like "Box 13" in South Texas. It  
14:47:17 12 just keeps coming back. What is the problem with  
14:47:20 13 interrogatory 13?

14:47:25 14 MR. GOODPASTOR: Your Honor, the end-product  
14:47:28 15 defendants told you last time we were at a hearing that there  
14:47:35 16 wasn't any information or they provided the information they  
14:47:37 17 thought they needed to provide. And I thought you made clear  
14:47:41 18 in that hearing that if it wasn't provided, it wasn't coming in  
14:47:41 19 or if it was not timely provided, it wasn't coming in. And we  
14:47:45 20 needed that information to take the depositions of the chip  
14:47:50 21 manufacturers as well as prepare our infringement report that  
14:47:57 22 was due on November 1st.

14:47:58 23 Well, we got very delayed responses. After your  
14:48:02 24 admonition Defendants began producing more information, but it  
14:48:09 25 was produced in such a late and untimely manner that it was

14:48:13 1 impossible for us to fully consider in our expert reports and  
14:48:17 2 it was impossible for us to fully consider it all in our  
14:48:20 3 preparation for the chip maker/manufacturer depositions within  
14:48:26 4 the time period for the fact discovery cutoff.

14:48:33 5           So in our reply we basically took your direction,  
14:48:36 6 Your Honor, and reserved our rights to exclude this evidence at  
14:48:39 7 trial because we don't think it was timely provided. We think  
14:48:42 8 the subsequent responses after the first hearing we had showed  
14:48:45 9 that the information was in the possession of these defendants,  
14:48:49 10 and they just chose not to provide it. And that prejudiced  
14:48:53 11 Bandspeed from including it in its expert infringement report  
14:48:58 12 as well as getting the information it needed from the chip  
14:49:02 13 manufacturers.

14:49:02 14           THE COURT: All right. LG and Toshiba, listen up.  
14:49:05 15 It was and has been and is my ruling that everything requested  
14:49:11 16 in interrogatory 13 that I previously ordered is to be  
14:49:16 17 provided, and it was to be provided some months ago.  
14:49:20 18 Therefore, when this case begins, anything that is tangentially  
14:49:28 19 related to a request in interrogatory 13 that you haven't  
14:49:31 20 provided, not only -- well, what that means is that I will  
14:49:38 21 strike any testimony I've previously let in that involved  
14:49:43 22 anything that you haven't provided with regard to  
14:49:45 23 interrogatory 13. And if Mr. Goodpastor timely raises it at  
14:49:52 24 trial, I will not allow any information in on that because I  
14:49:56 25 have had all I want of the way the defendants have consistently

14:50:02 1 tried to restrict interrogatory 13.

14:50:04 2 Mr. Goodpastor is correct on this point, and I have  
14:50:07 3 consistently ordered that information provided. So you and  
14:50:12 4 your clients just be forewarned on the risk you're running.  
14:50:15 5 And, Mr. Goodpastor, you may be prepared and ready to go on  
14:50:20 6 anything that anybody attempts to bring out that you think  
14:50:27 7 would have been affected by interrogatory 13, and I will take  
14:50:31 8 it up as we go along.

14:50:32 9 Now I will hear from Toshiba and LG.

14:50:40 10 MR. HADDAD: Your Honor, this is Gerard Haddad for  
14:50:42 11 Toshiba. We believe we did supplement our response to  
14:50:47 12 interrogatory 13. We've provided -- since this motion was  
14:50:53 13 filed, we provided very detailed expert reports and have had  
14:50:57 14 expert depositions. We think we've fully disclosed all our  
14:51:02 15 positions in the interrogatory and then with our expert, with  
14:51:08 16 his report on noninfringement.

14:51:11 17 THE COURT: Well, I'm not interested in the expert  
14:51:14 18 report. That's kind of tangential. That may have slipped  
14:51:23 19 something in or not. What I'm going to look at is exactly what  
14:51:26 20 was provided in response to interrogatory 13 what was described  
14:51:31 21 as a response to interrogatory 13.

14:51:32 22 You don't satisfy interrogatory 13 and my previous  
14:51:36 23 ruling if you provide something in other reports that you have  
14:51:40 24 not designated as being in specific response to  
14:51:43 25 interrogatory 13. I'm not going to guess what was in response

14:51:49 1 to interrogatory 13 and what was not in response to  
14:51:53 2 interrogatory 13 or whether anybody has decided it must have  
14:51:57 3 been in response to interrogatory 13 because of the way the  
14:52:02 4 other evidence at trial is going in. If it wasn't designated  
14:52:06 5 as an interrogatory response, it does not count as an  
14:52:09 6 interrogatory response in this case.

14:52:15 7 MR. HADDAD: Yes, Your Honor.

14:52:16 8 THE COURT: All right. Bandspeed's motion for  
14:52:19 9 protective order limiting the scope of End-Product Defendants'  
14:52:23 10 second amended notice of deposition, filed November 12th, 2013.

14:52:31 11 MR. GOODPASTOR: Yes, Your Honor. This motion  
14:52:33 12 involved basically very two simple issues. One was 30(b)(6)  
14:52:40 13 topics seeking the legal opinion. Those topics basically  
14:52:48 14 sought Bandspeed's legal opinion. And, actually, the topic  
14:52:51 15 used the word "opinion" in it about its rights and obligations  
14:52:55 16 under the Bluetooth patent copyright license agreement. And  
14:52:58 17 that's a matter for the lawyers to argue about, not a matter  
14:53:01 18 for a fact witness to testify about. It wasn't about whether  
14:53:06 19 Bandspeed had evidence of previous interpretations of the  
14:53:09 20 agreement. It was actually Bandspeed's opinions about its  
14:53:12 21 rights, and that was clearly seeking a legal opinion.

14:53:15 22 The other issue, Your Honor, related to orders that  
14:53:19 23 you issued in the last phase of this case and in the early  
14:53:22 24 phase of this -- or early part of the second phase of this case  
14:53:26 25 relating to whether the same 30(b)(6) topics for Bandspeed

14:53:35 1 could be asserted and deposed on twice.

14:53:38 2 And at the very beginning of this case, in the CSR  
14:53:42 3 phase, your order said that we were going to get these  
14:53:46 4 depositions done in the most efficient manner. And that if  
14:53:49 5 Bandspeed was deposed on a 30(b)(6) topic once or was noticed  
14:53:54 6 for a 30(b)(6) topic and all of these defendants had  
14:53:58 7 opportunity to ask questions at those depositions, under that  
14:54:01 8 order, those defendants are precluded from re-deposing  
14:54:09 9 Bandspeed on those topics.

14:54:10 10 When we got the latest 30(b)(6) notice of Bandspeed  
14:54:14 11 for the deposition of Bandspeed on two days in November, a  
14:54:19 12 goodly portion of those topics had already been addressed in  
14:54:22 13 previous depositions, of which all defendants had an  
14:54:25 14 opportunity to question the witness.

14:54:27 15 And so based on the Court's earlier order and in  
14:54:30 16 reliance on that, we asserted protection to prevent basically  
14:54:39 17 giving all of the defendants a second bite of the apple and  
14:54:42 18 unnecessarily taking the time and harassing the witnesses of  
14:54:45 19 Bandspeed.

14:54:46 20 Bandspeed has provided depositions of three different  
14:54:52 21 30(b)(6) witnesses. And Mr. Eversole, the CEO of Bandspeed,  
14:54:57 22 has now been deposed on three separate deposition occasions,  
14:55:03 23 the first one way back right after the case was filed, the  
14:55:07 24 second one for two days in 2012, and now a third session for  
14:55:15 25 two days in 2013. And we did not think it was appropriate for

14:55:18 1 the defendants to retread old ground that they clearly had the  
14:55:22 2 opportunity to investigate in earlier depositions.

14:55:30 3 MR. RUECKHEIM: Your Honor, this is Michael Rueckheim  
14:55:32 4 for LG. I'm sorry. I really wanted to jump in there. We  
14:55:35 5 believe the issue for Bandspeed's motion for protective order  
14:55:39 6 is basically moot at this point, as is LG's motion for  
14:55:42 7 protective order. End-product defendants haven't moved to  
14:55:47 8 compel Bandspeed to produce deposition testimony on these  
14:55:50 9 topics that are in dispute, and we're not going to at this  
14:55:54 10 point. Discovery is closed.

14:55:56 11 MR. HEALEY: Your Honor, this is Dave Healey for LG.  
14:55:59 12 I agree with Mr. Goodpastor on one point, and that is that the  
14:56:03 13 Bluetooth SIG license is a question of law for the Court and,  
14:56:07 14 you know, it's not a subject of whether I committed a  
14:56:11 15 conspiratorial act with the lawyers over at Toshiba.

14:56:16 16 THE COURT: All right. Bandspeed's motion to exclude  
14:56:20 17 or, in the alternative, compel LG defendants for failure to  
14:56:24 18 adequately prepare 30(b)(6) representatives that was filed  
14:56:29 19 November the 26th?

14:56:30 20 MR. GOODPASTOR: Your Honor, we are still maintaining  
14:56:32 21 that motion. And, given your statements, we'll seek to exclude  
14:56:36 22 testimony on the topics that the witnesses were not prepared  
14:56:41 23 for at trial. In summary, the witnesses that were provided  
14:56:46 24 after we flew 7,000 miles to Seoul, Korea at considerable  
14:56:55 25 expense were not prepared for numerous topics. We outlined

14:56:59 1 those topics in the motion.

14:57:01 2 Both of the witnesses testified to reviewing only a  
14:57:01 3 single document in preparation for the deposition. Neither of  
14:57:04 4 the witnesses spoke with any other LG employees in preparation  
14:57:08 5 for the deposition and only met with LG's attorneys. And  
14:57:15 6 Mr. Jo, who was designated on behalf of not just LG  
14:57:19 7 Electronics, but also LG Mobilecom and LG USA, stated that he  
14:57:26 8 didn't undertake any investigation in preparation for his  
14:57:30 9 testimony on behalf of those two codefendant organizations.  
14:57:34 10 And, in fact, when I asked him, you know, where they were  
14:57:38 11 headquartered, he couldn't tell me.

14:57:40 12 So these go to issues concerning the licensing  
14:57:44 13 topics. They go to issues concerning damages topics, including  
14:57:54 14 market share and royalties received or paid by LG under  
14:57:58 15 licensing agreements related to Bluetooth functionality. For  
14:58:02 16 example, Mr. Jeon had not even reviewed the relevant license  
14:58:05 17 agreements and couldn't provide any testimony on those.

14:58:08 18 And so because of what we view as blatant lack of  
14:58:14 19 preparation, we move to compel. We understand that compelling  
14:58:20 20 another deposition at this point based on your statements is  
14:58:23 21 unlikely, and so we reserve the right to exclude evidence being  
14:58:27 22 presented by LG on those topics because of the nature and  
14:58:30 23 wholesale lack of preparation of these witnesses.

14:58:33 24 THE COURT: All right. Let me hear from LG.

14:58:37 25 MR. RUECKHEIM: Your Honor this is Michael Rueckheim

14:58:39 1 for LG. We were a little surprised when we saw Bandspeed's  
14:58:45 2 motion. Bandspeed deposed two LG witnesses in Korea, as  
14:58:50 3 Mr. Goodpastor said, full days. These are eight-, nine-hour  
14:58:53 4 days. There are complete deposition transcripts. Bandspeed  
14:58:58 5 also had the opportunity to depose a witness from the U.S. LG  
14:59:03 6 defendant on issues that relate to the U.S. defendants. And  
14:59:07 7 the issues that were noticed for Korea all related to knowledge  
14:59:12 8 within the parent corporations.

14:59:16 9           The witnesses in this case were chosen because they  
14:59:19 10 were both senior engineering management who were in the best  
14:59:22 11 position to provide testimony on these topics. Mr. Goodpastor  
14:59:26 12 just now in his motion mischaracterized their testimony, that  
14:59:29 13 the witnesses did not review any documents. The witness  
14:59:33 14 testimony in the deposition, and the transcript is clear,  
14:59:35 15 stated that it could not know the identities of certain  
14:59:38 16 documents but, yes, they met with attorneys several times and  
14:59:41 17 looked at several documents in order to prepare. There's  
14:59:45 18 direct testimony that I think Mr. Goodpastor mentioned LG's  
14:59:48 19 witness Mr. Jo, that he spoke with members of his Bluetooth  
14:59:53 20 team in order to provide testimony.

14:59:55 21           The main problem here is that Bandspeed noticed  
14:59:59 22 somewhere between 150 and 200 different topics, a lot of them  
15:00:05 23 broadly worded, a lot of them related to expert testimony and  
15:00:09 24 legal testimony. And LG provided objections in its response  
15:00:13 25 that broadly ordered topics do not really help LG prepare for



15:00:18 1 the deposition, but we're going to go through and find the best  
15:00:20 2 people to provide answers. And that's pretty much what the  
15:00:23 3 transcripts show.

15:00:24 4 THE COURT: All right. I'll take that up at trial.  
15:00:27 5 Let me make it clear to all three of the remaining parties that  
15:00:34 6 I'm going to look at this carefully as the trial goes on. And  
15:00:38 7 if any party offers any testimony on any issue that was  
15:00:46 8 properly noticed for a deposition and then not provided, that  
15:00:53 9 testimony will not be allowed. That doesn't -- in other words,  
15:00:58 10 what I want you-all to know is this is not limited to the party  
15:01:02 11 who was deposed testimony, but anyone who seeks to offer  
15:01:09 12 testimony or testify about a matter that was properly noticed  
15:01:14 13 and for which the information was not previously provided,  
15:01:17 14 we're not going to allow it. So all three of you need to know  
15:01:21 15 that. That cuts across the board.

15:01:24 16 So look at your evidence, make sure you know what it  
15:01:27 17 is, and be prepared to tell the Court, if there is an  
15:01:31 18 objection, where that information was previously provided. I  
15:01:36 19 don't want everybody to look around and say, Well, we went to  
15:01:39 20 Korea and took a deposition, and he really didn't say anything  
15:01:43 21 about this. I want specificity out of all three of you when we  
15:01:48 22 get into trial about all of your testimony and when it was  
15:01:52 23 provided and all of these discovery matters.

15:01:57 24 Now, Toshiba Corporation, Toshiba America Inc.,  
15:02:01 25 Toshiba America Information Systems motion for summary judgment

15:02:05 1 I'm not going to take up right now but I'll have a ruling out  
15:02:08 2 on it. Response was due day before yesterday. Did you-all  
15:02:14 3 file a response?

15:02:16 4 MR. GOODPASTOR: No, Your Honor. There was an  
15:02:18 5 extension of the response date --

15:02:19 6 THE COURT: Okay.

15:02:19 7 MR. GOODPASTOR: -- that was joint -- subject of a  
15:02:23 8 joint motion, and I believe that response date is now the 14th.

15:02:26 9 THE COURT: Okay. All right. What now do you want  
15:02:32 10 to bring up?

15:02:43 11 MR. HADDAD: Your Honor, there is also a motion  
15:02:44 12 pending for summary judgment on antitrust issues.

15:02:47 13 THE COURT: Yes. And I will deal with it. I'm not  
15:02:50 14 going to entertain argument on it.

15:02:53 15 MR. QURESHI: Your Honor, this is Wasif Qureshi for  
15:02:55 16 LG. I wanted to raise two items. Regarding summary judgment  
15:02:59 17 motions, as Mr. Goodpastor mentioned, the parties have agreed  
15:03:02 18 for summary judgments to be filed by tomorrow, January 10th.  
15:03:07 19 And it wasn't clear to me from the Court's comments earlier  
15:03:10 20 whether the Court will also allow LG to file two motions. We  
15:03:15 21 planned to file a motion for summary judgment on no indirect  
15:03:19 22 infringement on certain claims and also --

15:03:21 23 THE COURT: Here's the situation you're in. Those  
15:03:26 24 summary judgments motions could very well be carried through  
15:03:29 25 trial because by filing them this late and my having to give

15:03:38 1 time for responses and replies, we get right up to where when I  
15:03:43 2 want to try this case. And so how are you going to handle  
15:03:51 3 that? Because I can take what you have in your motions for  
15:03:57 4 summary judgment and carry them through trial.

15:04:02 5 MR. QURESHI: Well, what I can suggest, Your Honor, I  
15:04:04 6 understand Mr. Goodpastor was planning to file a summary  
15:04:07 7 judgment motion tomorrow, too. We can meet and confer and try  
15:04:09 8 to come up with an abbreviated briefing schedule on the  
15:04:13 9 response and the reply.

15:04:14 10 THE COURT: Well, it still doesn't give me time to  
15:04:16 11 rule on it. I mean, we're right at the -- what? Do you think  
15:04:18 12 I don't have any other cases? That I've just been sitting  
15:04:21 13 around waiting for you-all to get everything in so I can study  
15:04:24 14 it all and sit down and draft a reasoned opinion?

15:04:30 15 MR. HEALEY: Your Honor, this is Dave Healey for LG.  
15:04:33 16 And I certainly am aware the burden on the Court. We're going  
15:04:37 17 to go back and make sure we look at things and that we don't  
15:04:41 18 file a single thing that won't be properly briefed and ready to  
15:04:46 19 go. I think the Court has, between the antitrust motion that's  
15:04:49 20 been briefed for a while and the Toshiba motion, the two key  
15:04:54 21 motions that will resolve the case. So we're going to be real  
15:04:58 22 careful about anything else we file.

15:05:01 23 THE COURT: Well, I'm just telling you, don't hold  
15:05:03 24 your breath for a ruling because, you know, I think this case  
15:05:10 25 is much more efficiently handled by trial. I think it would

15:05:14 1 have been more efficiently handled by trial if we tried it  
15:05:18 2 18 months ago.

15:05:19 3 I haven't seen anything get accomplished very much  
15:05:22 4 from the time that the manufacturer defendants settled out and  
15:05:28 5 we were left with just end-product defendants.

15:05:32 6 MR. WHITTLESEY: Judge, we do have 25 less parties or  
15:05:35 7 so.

15:05:35 8 THE COURT: Well, yeah. But, you know, that's just a  
15:05:37 9 factor of time, and that doesn't bother me. I've got -- you  
15:05:41 10 know, I've got a visiting judge in San Antonio or a senior  
15:05:46 11 judge in San Antonio that's just dying to come up here and deal  
15:05:48 12 with the rest of my docket. So that's -- you know, that's not  
15:05:51 13 a consideration. It's the issues and the lack of agreement on  
15:05:57 14 getting this case ready for trial that is most bothersome to me  
15:06:03 15 in the case, not how long it's going to take. That's not a big  
15:06:09 16 deal with me.

15:06:13 17 MR. WHITTLESEY: Judge, quick question. This is  
15:06:14 18 David Whittlesey. We've got some out-of-town lawyers --  
15:06:15 19 actually, a lot of out-of-town lawyers in the case. Most of  
15:06:17 20 them are out of town, and they're making hotel reservations and  
15:06:21 21 that sort of thing, and I think they're planning on coming on  
15:06:24 22 February 17th. And just checking with the Court, is that still  
15:06:27 23 your plan, to try the case? Was February 17th the day?

15:06:32 24 THE COURT: Well, actually, February 18th was the day  
15:06:34 25 I had in mind, but I haven't heard anything today that makes me

15:06:38 1 think I wouldn't want to pick a jury on February the 18th.

15:06:44 2 MR. WHITTLESEY: Great.

15:06:45 3 THE COURT: We're going to try it a little  
15:06:48 4 disjointedly because I've got some sentencings in there that  
15:06:51 5 I'm going to have to deal with as we go along and some criminal  
15:06:55 6 matters, so don't think we're going to try this straight  
15:06:58 7 through. But I don't see any reason why we can't pick a jury  
15:07:08 8 on the 18th and proceed forward. Anybody have a disagreement  
15:07:11 9 with that?

15:07:13 10 MR. GOODPASTOR: No, Your Honor.

15:07:15 11 MR. HEALEY: Your Honor, this is Dave Healey for LG.  
15:07:17 12 We don't have any disagreement. I would urge the Court to look  
15:07:22 13 at that antitrust *Noerr-Pennington* motion because that just  
15:07:29 14 involves all these lawyers who have been counsel in this case.

15:07:32 15 MR. GOODPASTOR: Your Honor, Chris Goodpastor. I  
15:07:35 16 think you've already stated you don't want to hear any more  
15:07:39 17 argument on our motion, but our response address the  
15:07:41 18 *Noerr-Pennington* pending argument squarely. It simply doesn't  
15:07:44 19 apply in this context for a number of reasons, and it's all  
15:07:48 20 based on Supreme Court precedent. So we'll just refer you to  
15:07:51 21 that and move on.

15:07:53 22 THE COURT: How long do you think it will take you to  
15:07:56 23 try this case?

15:08:01 24 MR. GOODPASTOR: The parties -- Your Honor, the  
15:08:04 25 parties had previously discussed a two-week trial.

15:08:08 1 THE COURT: That's 10 trial days?

15:08:10 2 MR. GOODPASTOR: Ten trial days. Yes, sir.

15:08:13 3 THE COURT: Everybody concur?

15:08:19 4 MR. SHERWOOD: Your Honor, this is Jeff Sherwood for  
15:08:21 5 Toshiba. We think that's probably about right.

15:08:24 6 THE COURT: All right. How closely linked are  
15:08:27 7 Toshiba and LG in their defenses? I haven't heard anything  
15:08:32 8 that make me think your interests diverge. I ask this question  
15:08:37 9 for purposes of determining strikes I'm going to allow.

15:08:46 10 MR. HEALEY: Your Honor, if what the infringement and  
15:08:51 11 damages and everything is focused on, the standard and,  
15:08:55 12 obviously, the antitrust I won't get into, again, yeah, then  
15:09:01 13 the standard is what the standard is. And, you know, there's  
15:09:04 14 differences in each party's situation on how their products are  
15:09:09 15 configured and their sales, and there's some real issues there.

15:09:12 16 But if, you know, this case turns out that it's  
15:09:17 17 specifics about LG products that are different from the  
15:09:20 18 standard or specifics on Toshiba stuff that is different from  
15:09:24 19 the standard, these parties have nothing to do with each other,  
15:09:27 20 frankly, other than whether or not they bought the chips from  
15:09:31 21 the same person, because most of the stuff is in the chip from  
15:09:35 22 the vendor. But it really just depends. If this is focused on  
15:09:40 23 the standard and that's what the case is about, that's one  
15:09:43 24 thing. If it's about our individual products, that's another.

15:09:46 25 THE COURT: Only you-all can tell me. You know,

15:09:51 1 otherwise I'll just decide how many strikes you're going to  
15:09:55 2 get. Right now it's three to a side. Everybody comfortable  
15:09:58 3 with that?

15:10:01 4 MR. HEALEY: Your Honor, unless Mr. Goodpastor can  
15:10:03 5 tell us this is just about the standard, I think we'd like to  
15:10:05 6 have, you know, at least three -- there will only be two  
15:10:09 7 defendants at trial, and we'd like to have our own three  
15:10:13 8 strikes.

15:10:13 9 MR. GOODPASTOR: Your Honor, we think there's  
15:10:16 10 sufficient overlap between the two defendants that three  
15:10:19 11 strikes per side is more than adequate. A lot of the  
15:10:22 12 infringement case based on the standard. The chips -- I would  
15:10:29 13 have to check to see if Toshiba and LG overlap in chip  
15:10:32 14 manufacturers. I don't know that off the top of my head. But  
15:10:35 15 because of a good portion of the infringement case is based on  
15:10:38 16 the standard, we think that three strikes per side is  
15:10:41 17 appropriate.

15:10:43 18 MR. HEALEY: If it's about -- if it's about the  
15:10:46 19 standard or it's not. And if it's not about the standard or  
15:10:50 20 it's mostly about the standard or about a bunch of other stuff,  
15:10:53 21 too, at a minimum we should get our own set of strikes. And,  
15:10:57 22 heck, depending on what Mr. Goodpastor is going to do, we may  
15:11:01 23 even, God forbid, have to say, well, we should have a separate  
15:11:05 24 infringement trial under the AIA.

15:11:08 25 But it's his case. And if it's about the standard,

15:11:09 1 it's about the standard. If not we're not, we're not lumped in  
15:11:12 2 with Toshiba, we're not the same business, we're not accused of  
15:11:16 3 anything because of doing business with Toshiba. We've got our  
15:11:20 4 products; they've got theirs.

15:11:21 5 THE COURT: Well, we won't know what it's going to be  
15:11:24 6 'til we get into it. You remember some months ago I told you  
15:11:28 7 that I would want an agreed charge. Have you-all spent any  
15:11:33 8 time working on your charge?

15:11:35 9 MR. GOODPASTOR: Your Honor, we spent time working on  
15:11:37 10 the charge. We have not met and conferred about an agreed  
15:11:41 11 charge yet.

15:11:42 12 THE COURT: Well, it's time.

15:11:43 13 MR. GOODPASTOR: Understood.

15:11:46 14 THE COURT: Because it is my intention to allow the  
15:11:49 15 jury copies of the charge throughout the trial so they'll know  
15:11:53 16 where they're headed with this and what questions they're going  
15:11:57 17 to have to answer.

15:11:59 18 MR. GOODPASTOR: Understood. Your Honor, I just got  
15:12:03 19 a notice from our administrator that they're saying that the  
15:12:06 20 call only has five minutes left, and so they're going to  
15:12:11 21 circulate a new call number. I apologize for this glitch.

15:12:14 22 THE COURT: Do we need more than five minutes?

15:12:18 23 MR. GOODPASTOR: I'll defer to Your Honor on that.

15:12:21 24 THE COURT: Well, I've asked what I want to ask.

15:12:24 25 Anybody have anything?



15:12:27 1 MR. SHERWOOD: I had one short question. With jury  
15:12:31 2 selection starting on the 18th, as I understand it, the various  
15:12:36 3 pretrial documents, the charge, and so forth would be due 14  
15:12:40 4 days before. And I just wanted to confirm that.

15:12:42 5 THE COURT: That's correct.

15:12:44 6 MR. SHERWOOD: Thank you, Your Honor.

15:12:45 7 THE COURT: Anything else?

15:12:46 8 (No response)

15:12:47 9 THE COURT: All right. Thank you-all. I look  
15:12:50 10 forward to seeing you on the 18th.

15:12:53 11 (End of transcript)

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1 **UNITED STATES DISTRICT COURT        )**

2 **WESTERN DISTRICT OF TEXAS            )**

3       I, Arlinda Rodriguez, Official Court Reporter, United  
4 States District Court, Western District of Texas, do certify  
5 that the foregoing is a correct transcript from the record of  
6 proceedings in the above-entitled matter.

7       I certify that the transcript fees and format comply with  
8 those prescribed by the Court and Judicial Conference of the  
9 United States.

10       WITNESS MY OFFICIAL HAND this the 14th day of  
11 January 2014.

12

13                                    /S/ Arlinda Rodriguez  
14                                   Arlinda Rodriguez, Texas CSR 7753  
15                                   Expiration Date: 12/31/2014  
16                                   Official Court Reporter  
17                                   United States District Court  
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19                                   501 West 5th Street, Suite 4152  
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